

OPTION MEMO

To: Cabinet Council on Management and Administration

From: Donald J. Devine, Director, OPM

Subject: Monetary awards for non-career SES members

I. Issue -- The law presently prohibits non-career SESers from receiving bonuses of the sort granted to career SES members. Current guidance from OPM states that agencies also should not give "sustained superior performance" incentive awards to non-career Senior Executive Service members, although Schedule Cs are eligible. Should this policy be retained? Should the Administration seek legislative changes that would allow non-career SESers to be eligible to receive SES bonuses?

II. Background -- In memoranda to agencies on July 24, 1980 and January 22, 1982, OPM stated that incentive awards should not be used to reward sustained superior performance by SES members. Proposed regulations to this effect were published in July, 1981, but have not been finalized. The purpose of the prohibition was to prevent agencies from using the incentive awards program in a way which might be viewed as circumventing congressional intent.

A number of comments on the proposed regulations pointed out that while sustained superior performance awards would indeed duplicate bonuses for career SES members, the fact that non-career SES members cannot receive bonuses argues for allowing them to receive SSP awards instead. However, OPM's General Counsel has concluded that despite the absence of statutory language specifically prohibiting such awards for non-career SESers, the best interpretation of Congressional intent on the matter is implicit in its decision to exclude non-career SESers from the bonus system. Awarding bonuses to political appointees also might have negative public relations aspects.

OPM is preparing to issue FPM guidance to agencies advising against performance awards for non-career Senior Executive Service members during 1983. In a related matter, a bill presently before the Senate could become a vehicle for modifications in the law governing the SES bonus system.

III. Analysis -- The arguments in both instances are the same: should financial incentives be provided to non-career SESers as a means of providing greater motivation for high-quality performance? Or should we take the position that the principal reward for non-career SES members is and will continue to be the opportunity to serve at a high level in the government, and to advance the goals

of the President? OPM has brought this matter before the Governmentwide Personnel Policy Group three times. Each time, the political Assistant Secretaries have opposed non-career bonuses, and career appointees have favored them.

IV. Options --

1. OPM should proceed to issue planned guidance recommending against non-career sustained performance awards.
2. OPM should proceed to issue final regulations on SES bonuses, along the lines of the rules published in proposed form in 1981, which prohibit cash awards for sustained superior performance for non-career SES members. Awards for "special acts," such as inventions, and other acts of a meritorious nature, would not be prohibited.
3. Direct that OPM modify its guidance and drop the prohibition on giving sustained superior performance incentive awards to non-career SES members. If challenged in court, such awards might be held to be a violation of Congressional intent, but the legal status is far from being clear.
4. Establish an Administration position favoring legislative changes which would make non-career SESers eligible for bonuses, and convey this position to the Congress.

V. Recommendation -- OPM recommends option 1.